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and USF&G, Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

UNITED STATES OF AMERICA for the use of)
NORTH STAR TERMINAL & STEVEDORE)
COMPANY, d/b/a NORTHERN STEVEDORING &)
HANDLING, and NORTH STAR TERMINAL &)
STEVEDORING COMPANY, d/b/a Northern)
Stevedoring & Handling, on its own behalf,)
Plaintiff,)
and)
UNITED STATE OF AMERICA for the use of)
SHORESIDE PETROLEUM INC., d/b/a Marathon)
Fuel Service, and SHORESIDE PETROLEUM)
INC., d/b/a marathon Fuel service, on its own)
behalf,)
Intervening Plaintiffs,)
and)
METCO, INC.,)
Intervening Plaintiff,)
vs.)
NUGGET CONSTRUCTION INC.; SPENCER)
ROCK PRODUCTS INC.; UNITED STATES)
FIDELITY AND GUARANTY COMPANY; and)
ROBERT A. LAPORE,)
Defendants.)

) No. A98-009 CIV (TMB)
NUGGET'S MOTION IN
LIMINE RESPECTING
PUNITIVE DAMAGES CLAIMS

I. INTRODUCTION

Nugget Construction Company ("Nugget") hereby moves the court for an order *in limine* excluding at trial all statements, argument, testimony, documentary or other evidence pertaining to Nugget's financial condition unless and until the trier of fact determines that North Star is entitled to recover punitive damages from Nugget.

II. BACKGROUND

This litigation arises from a project in Homer, Alaska, on which Nugget was the general contractor. North Star Terminal and Stevedoring Company (“North Star”) was a vendor of Nugget’s rock supplier, Spencer Rock Products, Inc. (“Spencer”). At this time, North Star is the only second-tier vendor remaining with claims against Nugget, the other second-tier vendors, Shoreside Petroleum, Inc. (“Shoreside”) and Metco, Inc. (“Metco”) having settled their claims against Nugget and its surety.

One of the remaining claims North Star has against Nugget is for tortious interference with its business relationship. Accompanying that claim is a demand for punitive damages from Nugget.

III. ARGUMENT

Nugget asks the court to enter an order excluding evidence of Nugget's financial condition until such time as North Star has established that it is entitled to recover punitive damages from Nugget. The United States Supreme Court has held that evidence of a party's financial condition has no bearing on liability for punitive damages; rather, such evidence is admissible only as a measure of the *amount* of punitive damages a court should award. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 270, 101 S.Ct. 2748, 69 L.Ed.2d 616 (1981).

In this case, North Star's claim for punitive damages is a state law claim over which this court has supplemental jurisdiction pursuant to 28 U.S.C. § 1337. When

1 ruling on the admissibility of evidence of a party's financial worth as relevant to a
 2 punitive damages claim based on state law, the district court must "make sure the
 3 award is within the confines of state law." *Morgan v. Woessner*, 997 F.2d 1244, 1258
 4 (9th Cir. 1993).

5 Under Alaska law in effect at the time North Star's punitive damages claim arose,
 6 punitive damages may be awarded if a defendant's conduct is "outrageous, such as
 7 acts done with malice or bad motives or a reckless indifference to the interests of
 8 another." *Sturm, Roger & Co., Inc. v. Day*, 594 P.2d 38, 46 (Alaska 1979), overruled on
 9 other grounds by *Dura Corp. v. Harned*, 703 P.2d 396, 405 n. 5 (Alaska 1985). Liability
 10 for punitive damages depends on a defendant's **conduct**, not its financial status.
 11 Consequently, financial status has no relevance to the determination of whether a
 12 punitive damages award is appropriate.

13 In fact, it is not even necessary to introduce evidence of a defendant's wealth to
 14 support an award of punitive damages. *Pluid v. B.K.*, 948 P.2d 981, 986 (Alaska 1997).
 15 Alaska courts have routinely held a defendant's wealth to be relevant to the propriety of
 16 the size of a punitive damages award, see *Cameron v. Beard*, 864 P.2d 538, 551
 17 (Alaska 1993); *Clary Ins. Agency v. Doyle*, 620 P.2d 194, 205 (Alaska 1980); *Ben
 18 Lomond, Inc. v. Campbell*, 691 P.2d 1042, 1048 (Alaska 1984); however, no court in
 19 Alaska has ever held that a defendant's wealth has any relevance to the issue of liability
 20 for punitive damages. Since only relevant evidence is admissible, Fed. R. Evid. 402,
 21 evidence of Nugget's financial status should not be admitted on the issue of punitive
 22 damages liability.

23 For the foregoing reasons, the court should exclude any evidence of Nugget's
 24 financial condition until North Star has established that it is entitled to an award of
 25 punitive damages.

1
2 Dated: July 2, 2007

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of July, 2007, a true and correct copy of the foregoing was served electronically on:

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